# Supreme Court of the United States

OCTOBER TERM, 1944

No. 279

CANADIAN AVIATOR LTD.,

*Petitioner,*

against

THE UNITED STATES OF AMERICA,

*Respondent.*

## REPLY BRIEF FOR PETITIONER

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Respondent misunderstands the plain allegations of the libel and speaks of "the actions of naval authorities whose directions the *Cavelier* was following" (Brief, p. 16). True, the *Cavelier* had received orders to follow *YP 249*, but no complaint is made of those orders. When she struck the wreck the *Cavelier* was not following any orders as to her course. On the contrary, she was following *YP 249*. That vessel was not merely a means of communicating directions to the *Cavelier*, like a flag or a radio signal. The libel makes no suggestion that there was any communication between *YP 249* and the *Cavelier*. *YP 249* was herself, as a physical object, the *Cavelier's* guide—and led her astray.

Whether *YP 249* be considered merely as a means of conveying to the *Cavelier* the course she had to take in entering Delaware Bay, as respondent suggests (Brief,

p. 1[illegible]), the fact remains that *YP 249*, a legal entity in the admiralty, physically, by her own movements, led the *Cavelier* into collision with the submerged wreck and thereby "caused" the damage in suit.

We do not contend, as respondent asserts (Brief, p. 7), that the Act authorizes suit "whenever damages are caused by the negligence of the officers or crew of a public vessel or other officers who cause her to be used in a particular manner". Assuming respondent's definition to be precise, viz., that "the negligence of government servants creates liability under the Act only when a public vessel is the physical agent by which damages are caused" (Brief, p. 7), the jurisdiction here must be sustained. Note that the final word is the statutory "caused", rather than "done", sometimes substituted. The only question in this case is whether *YP 249* "caused" the *Cavelier* to strike the wreck and sustain damage. The libel alleges that she was the physical agent that led the *Cavelier* into the wreck.

**Legislative history**

Respondent suggests (Brief, pp. 11-12) that the omission of the word "collision" from the title and from Section 1 of the bill which became the Public Vessels Act, although those words were used in the prior bill, H. R. 6989, may be explained by "the draftsman's desire for greater accuracy of statement". On the contrary, the language of Section 1 of the prior bill, H. R. 6989, was accurate and would satisfy a purist. It provided for suit "for damages caused by collision by a public vessel". In the Act, however, the words "by collision" were omitted and Section 1 reads "for damages caused by a public vessel".

The full text of the prior bill, H. R. 6989, is printed as Appendix A to this brief, *infra*, pp. 9-11.

That the change in Section 1 was not editorial but substantial is established by the change in Section 3. In the prior bill, H. R. 6989, Section 3 provided:

> "Sec. 3. That in the event of the United States filing a libel in rem or in personam in admiralty for damages resulting *from collision* with a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off against the United States in such suit for and on account of any damages resulting *from such collision* (italics ours)."

In the substitute bill, which became the Act, Section 3 provides:

> "Sec. 3. That in the event of the United States filing a libel in rem or in personam in admiralty for *damages caused by a privately owned vessel*, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counter-claim against the United States in such suit for and on account of any *damages arising out of the same subject matter or cause of action: Provided*, That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this Act, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given (italics ours)."

The original provision was limited to collision cases. The provision adopted is not so limited but extends to suits "for damages caused by a privately owned vessel" and cross libels for "damages arising out of the same subject matter or cause of action".

Respondent refers (Brief, p. 9) to the Act of December 28, 1922, 42 Stat. 1066, authorizing the Secretary of

the Navy to adjust claims not exceeding $3,000 as, in the language of the Committee, the "only general legislation covering the subject matter of the pending bill". The subject matter of that Act was not confined to collision cases. It provides that

> "The Secretary of the Navy is hereby authorized to consider, ascertain, adjust, and determine the amounts due on all claims for damages occasioned since the 6th day of April, 1917, where the amount of the claim does not exceed the sum of $3,000, occasioned by collisions *or damage incident to the operation of vessels* for which collisions *or other damage* vessels of the Navy or vessels in the Naval Service shall be found to be responsible, * * * (italics ours)."

**Prior decisions**

We have referred to *The Vera Cruz*, (No. 2) 9 L. R. Prob. Div. 96; *The Osceola*, 189 U. S. 158; *Dobson* v. *United States*, 27 F. 2d 807, C. C. A. 2, cert. denied 278 U. S. 653, and *O'Neal* v. *United States*, 11 F. 2d 869, aff'd 11 F. 2d 871, C. C. A. 2, at pages 12-13 of our main brief.

*The Westmoor*, 27 F. 2d 886 (Respondent's Brief, p. 13), did not arise under the Public Vessels Act and was not a suit against the United States. It merely held that where a ship master provides his guest with liquor to the point of intoxication, following which the guest falls, sustains injuries and dies, no lien against the vessel arises.

*The President Madison*, 17 F. 2d 526 (Respondent's Brief, p. 13), involved injuries resulting from the negligent handling of a gangway and the Court, construing a state statute, distinguished between damage done by the ship and damage done by her gangway wrongfully placed, and held that no lien arose.

*Pedersen* v. *The United States*, 14 F. Supp. 1008 (Respondent's Brief, p. 14), dealt with personal injuries sustained partly on board a public vessel and partly on the wharf. The Court held only that the Act did not authorize suit for the negligent use of appurtenances of the wharf and that libellant had failed to prove any negligence on the part of the public vessel herself. In the language quoted by respondent from this decision the Court was distinguishing between damage inflicted by the vessel or her appurtenance on the one hand and, on the other hand, damage inflicted by the appurtenances of the wharf.

**Liability on *in rem* principles**

Respondent suggests (Brief, pp. 17-20) a substantial difference in the coverage of the Public Vessels Act and the Suits in Admiralty Act. No difference is specified. By the terms of the Suits in Admiralty Act the Government is suable "in cases where if such [government] vessel were privately owned or operated • • • a proceeding in admiralty could be maintained." But private vessels are suable *in rem* only where they have "caused" damage and the scope of liability under the Public Vessels Act is likewise described by the word "caused".

Respondent's argument (Brief, p. 19) that the Suits in Admiralty Act is incorporated into the Public Vessels Act only for procedural purposes takes no account of the words "shall be subject to" in Section 2 of the Public Vessels Act—see our main brief, page 23.

The only provisions of the Suits in Admiralty Act excluded by the clause "in so far as the same are not inconsistent herewith" are those which deal differently with

subjects dealt with in both Acts. There is inconsistency only where a subject is dealt with in mutually exclusive terms in the two Acts. The Suits in Admiralty Act deals with *in rem* liability. The Public Vessels Act makes no express mention of the subject. There is, therefore, no inconsistency and the clause incorporating the Suits in Admiralty Act must be given effect in this respect.

Respondent asserts (Brief, pp. 18-19) that the reason for permitting suit on *in rem* principles in the Suits in Admiralty Act has no application to the Public Vessels Act and concludes that *in rem* liability under the Public Vessels Act was not contemplated. We submit that Congress intended to create by these two Acts an integrated system to afford redress to those who sustain damages caused either by a merchant or a public vessel of the United States. It was logical and consistent for Congress to allow suit on *in rem* and *in personam* principles under both Acts for the sake of consistency in the nature of the liability assumed with respect to the two classes of vessels.

**Liability on *in personam* principles**

At pages 21-24 of our main brief we made the point that the Public Vessels Act authorizes suit on *in personam* principles and that the libel alleges a cause of action on such principles, for which reason the jurisdiction must be sustained. In its brief respondent does not appear to challenge the point.

See *Arundel Corporation* v. *United States*, not officially reported, 1944 A. M. C. 1471.

**Considerations of policy**

Respondent, at pages 20-22, refers to various considerations, said to be of policy, as bearing upon the issues at bar. We submit that considerations of policy are for Congress. The language before the Court for interpretation is not obscure and the simple facts of this case call only for an interpretation of the statute as bearing upon that state of facts alone.

We do not agree that the successful maintenance of this suit would subject the United States to suit under all the circumstances so enthusiastically visualized by counsel.

We did not cite *Standard Oil Company* v. *United States*, 267 U. S. 76, in support of an argument that the United States would be liable if the *Virginia* had been a public vessel of the United States. We cited the case for the proposition which it fully supports, that the cause of the damage there, as here, was not the wreck or the rock upon which the vessel struck but rather the author of the course resulting in the stranding.

**The libel states a cause of action**

Respondent attempts to argue an exception not taken, viz., that the libel does not state a cause of action (Brief, pp. 23). The only exceptions taken, and the only exceptions considered below, raised only the jurisdictional question (R. 3-4).

The libel alleges with sufficient clarity in the third and fourth articles (R. 2) that *YP 249* negligently directed her course so as to lead the *Cavelier* into collision with the wreck. The allegations are that the striking was caused by "the fault and negligence of the United States vessel

*YP 249* and those in charge of her". The existence of a duty is implicit in this allegation. As respondent says: "In the absence of a showing of a duty to the *Cavelier*, there could not be negligence on the part of *YP 249*" (Brief, p. 6).

Admiralty Rule 22 does not require that libels allege the legal duty claimed to have been breached but only "the various allegations of fact upon which the libellant relies in support of his suit".

## CONCLUSION

**The decree of the Circuit Court of Appeals should be reversed and the cause remanded with instructions to sustain the jurisdiction and require respondent to answer the libel on the merits, with costs.**

Respectfully submitted,

CHAUNCEY I. CLARK,
EUGENE UNDERWOOD,
Counsel for Petitioner.

New York, N. Y.,
January 5, 1945.

## APPENDIX A

### H. R. 6989

**In the House of Representatives**

**February 14, 1924**

Mr. Underhill introduced the following bill which was referred to the Committee on Claims and ordered to be printed.

A BILL

Authorizing suits against the United States in admiralty for collisions caused by and salvage services rendered to public vessels belonging to the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by collision by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States; *Provided*, That the cause of action arose after the 6th day of April 1920: *Provided further*, That the consent of the Attorney General of the United States, in writing, to the maintenance of such suit is first obtained and filed with the libel: *And provided further*, That said consent is applied for within one year after the passage of this Act in all cases arising prior thereto, and in all other cases within one year after the cause of action arose, and that the libel in every case is filed within one year after the consent is granted.

SEC. 2. That such suit shall be brought in the district court of the United States for the district in which the

vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them reside or have their principal place of business in the United States, and shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, in so far as the same are not inconsistent herewith.

SEC. 3. That in the event of the United States filing a libel in rem or in personam in admiralty for damages resulting from collision with a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off against the United States in such suit for and on accounnt of any damages resulting from such collision.

SEC. 4. That in any suit brought under this Act on a cause of action arising since April 6, 1920, and prior to the approval of this Act, where an investigation has been held by a department of the Government as to the facts of any such cause of action, and a witness can not be produced upon the trial, his testimony, given at the investigation, may be offered, by the United States, and when so offered shall be received in evidence.

SEC. 5. That no officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the Secretary of the Department having control of the vessel at the time of cause of action arose.

SEC. 6. That no suit may be brought under this Act by the national of any foreign government unless it shall be certified by the Secretary of State that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

SEC. 7. That the Attorney General of the United States is hereby authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this Act, and for which a libel or cross libel has actually been filed.

SEC. 8. That any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 7 of this Act, shall upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

SEC. 9. That the Attorney General of the United States shall report to the Congress at each session thereof all suits in which final judgment shall have been rendered and all claims shall have been settled under this Act.

SEC. 10. Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.